

COST OF THE SECURITY PROGRAMS

The Record

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A YEAR has passed since the McCarthy-Army dispute culminated in the Senate's censure of its junior member from Wisconsin. The change in the atmosphere of American politics in the period since the Senator collided with the Eisenhower administration head on—after first backing it into a corner—has been very great. In the spring of 1954, the Congressional investigations receiving the widest publicity were those conducted by three committees dealing with Communism. One of them—the Senate Government Operations Committee, which was once McCarthy's platform—has withdrawn from that field almost entirely for the time being. The Senate Internal Security Subcommittee and the House Un-American Activities Committee have now been overshadowed by two Senate Committees investigating violations of civil liberties in the operation of the Federal employee security program.

The changed situation has coincided with McCarthy's eclipse, but the former has not been entirely a product of the latter. The law of diminishing returns has also operated. There is a limit to the number of exposés of Harry Dexter White the average

citizen is willing to read. Elizabeth Bentley and Whittaker Chambers have no new information to impart, which is not surprising in view of the many years now elapsed since their respective breaks with Communism. No comparable revelations have been made by more recent apostates from the Communist faith in this country. (Thus Louis Budenz's most significant disclosure is still his first, that of the part he himself played in preparing the assassination of Trotsky; the quality of the information he retailed on Communist affairs may perhaps best be judged by the fact that even after leaving the party he still believed in the truth of the Moscow trials.) The absence of any reference to the United States in the rather wide-ranging information supplied by such former Soviet agents as Petrov and Rastvorov may even suggest—although it certainly does not prove—that the Soviet espionage apparatus in the United States is not functioning too well at present. It may well be, of course, that there are still Soviet agents in high places whose activities will be exposed as belatedly as others have been in the past, but for the present there are no new villains of any real stature, and the lack cannot be supplied either by extracts from the "Morgenthau diaries" or by TV bit-players who achieve the first headlines of their careers by pleading the Fifth Amendment.

Certainly, too, the reconquest of Congress by the Democrats, convinced that the Communist issue has been used to smear them, has played a part in the changed atmosphere. Congressional committees make news, and the news they make affects public opinion; it seems unlikely that a Republican-controlled Congress would be investigating violations of civil liberties in security procedures. (But the Democratic electoral

THE national security program today is without doubt the principal source of supply for what might be called the Chamber of Bureaucratic Horrors. MAURICE J. GOLDBLOOM attempts to assess that program with the measure provided by recent collections of materials: *Case Studies in Personnel Security*, by Adam Yarmolinsky (Bureau of National Affairs, 310 pp.), and *The Draftee and Internal Security*, by Roland Watts (Workers Defense League, 96 pp., 4 appendices). Mr. Goldbloom, a frequent contributor, is author of *American Security and Freedom* (1954), published by Beacon Press. He regularly surveys the field of civil liberties for the American Jewish Year Book.

victory was in part a reflection of an already accomplished change of attitude; attempts to use the Communist issue in the 1954 campaign failed in a number of key states. Even his being Owen Lattimore's attorney did not prevent Joseph O'Mahoney from carrying Wyoming for the Democrats.) Again, the publicity given to such cases of flagrant injustice as Abraham Chasanow's and Wolf Ladejinsky's played a part in changing the public attitude to the security program. But, again, if public opinion had not already begun to change, Ladejinsky and Chasanow might have found it as hard to get a hearing as did numerous other victims of unwarranted charges.

However, a change of climate is one thing; the achievement of a proper balance between security and freedom is another. In recent years we have acquired a set of laws and administrative procedures which, politically motivated and carelessly drawn, have set back the cause of civil liberty much more certainly than they have advanced that of security. The laws remain on the books; indeed, hitherto inoperative provisions are currently being brought into play. The administrative procedures are not only essentially unchanged; there is substantial evidence that they are still being carried out largely by personnel completely unqualified for one of the most difficult tasks in government, and in a spirit too often unmoved by any considerations either of justice or mercy.

Two recent studies point up the unsatisfactory character of our present Federal security procedures. One, *Case Studies in Personnel Security*, was prepared by Adam Yarmolinsky for the Fund for the Republic; it is an account of fifty cases (a few involving sex deviation or drink, but most of them political) under various security programs instituted by the Federal government.

The cases in the Yarmolinsky study are a preliminary selection from between two hundred fifty and three hundred cases examined by selected lawyer-interviewers in twelve cities, and in particular from those cases, approximately half, in which the indi-

viduals concerned were willing to permit publication of the details. The information available was somewhat one-sided, since the government did not supply any of the material in its possession; in most cases, however, the transcript of hearings was available for examination, and in all cases the charges were available. Thus if the government's case was in any degree unavailable to Yarmolinsky, it was usually because it was in the same degree unavailable to the employee who had to defend himself against it. The fact that the charges are in some cases sketchy, and that the hearing transcripts frequently fail to show the nature of the evidence against the employee, is itself one of the weaknesses of the whole procedure.

Thirty-one cases (actually thirty-three, since two involve both a husband and a wife) relate to the Truman loyalty program (Executive Orders 9835 and 10241), the Truman security program (Public Law 733), and the Eisenhower loyalty-security program (Executive Order 10450), all dealing with Federal civilian employees. In a number of the cases reported, individuals were brought up on charges under two or more of these programs; cleared under one program, they were put through new hearings—and frequently suspended pending these hearings—when the government's standards changed.

The cases assembled by Yarmolinsky—as well as a number which have come to my personal attention over the last several years—make it clear that the charges are all too apt to be unbelievably petty and captious, and the procedure grossly at fault. A charge which appears repeatedly is that of reading Communist literature. Another is that of associating with Communists or members of Communist front groups; often, though not always, these cases turn out to involve "guilt by kinship." Other charges include using material from the Institute of Pacific Relations in writing a paper for a university course, fund-raising on behalf of Loyalist Spain, membership in the Book Find Club, membership in Communist-controlled or influenced trade unions, stating that "public power projects are designed for the benefit

of politicians," and buying books at a store which was "a possible successor to the Washington Book Shop." (It wasn't.)

In one case the employee, a Negro, was charged with using the phrase "second-class citizen"; it turned out that he had said he would rather be a second-class citizen in Mississippi than a first-class citizen in the Soviet Union. In some cases charges not included in the original statement were introduced in the course of hearings; in others, hearing boards recommended that employees be cleared, but they were nevertheless dismissed. The contrary has also taken place; in some departments the top echelons seem to have made a conscientious if not always successful effort to be fair. Other departments—notably the Post Office, where proof of active and effective anti-Communism was not enough to prevent dismissal—seem to have a policy of dismissing anyone against whom any charges have been brought.

ROUGHLY a third of the cases in this study concern people whose positions could not by any stretch of the imagination be called sensitive; the work of another third might be considered sensitive by stretching a point, though the opportunities for espionage and sabotage that their jobs offered were probably no greater than those available to the average American in the course of daily life. The remaining cases concern employees having some sort of access to classified information—but that is a questionable criterion of sensitivity, since bureaucratic timidity rather than any substantial grounds for apprehension is responsible for the classification of a huge number of documents. The group of cases selected by Yarmolinsky is in this respect more or less representative; indeed, it would appear that the percentage of non-sensitive or barely sensitive positions involved in all security cases is somewhat higher than in the sample studied here. (In the case of Kendrick M. Cole, a former food and drug inspector, the Supreme Court has now agreed to rule on the legality of extending the security program to non-sensitive positions. The government concedes Cole's

loyalty; his associations and not his affiliations are at issue.)

While most of the cases included in the sample come from the period before McCarthy's downfall, such recent instances as those of Joseph Summers and Mrs. Sanford Waxer indicate that the situation has not changed significantly. But it would be surprising if it had—the security officers in the various agencies have not changed, the terms of the order under which they operate have been modified only slightly, the courts have so far refused to interfere, and it is only in the last few months that Congress has begun to intervene.

The fifteen industrial security cases in the Yarmolinsky study are fairly similar to the government worker cases, both as to the charges and the character of the proceedings. They can scarcely be said to present any pattern except one of extreme arbitrariness and unpredictability. Some hint of this may have reached Congress, which has so far given no sign of moving to pass the "Defense Facilities Bill"—requested by the armed services and introduced by Senator John Marshall Butler—which would extend the industrial security program from defense work to anything designated as a defense facility. (It should be noted, however, that the McCarran Act makes provision for barring members of organizations registered under it from access to a wide variety of "defense facilities.")

IN BOTH the government employee and industrial security programs, much of the existing inequity is the result of biting off more than we can chew. The security officer with any real political understanding is the exception rather than the rule. It would be next to impossible to get together a staff of properly qualified security officers large enough to check the backgrounds of several million government employees and defense workers even with the best methods of recruitment. In fact, however, the method of recruitment is such that it tends to eliminate rather than select the qualified. There has been no attempt to set up a civil service

standard of political information for security officers. Some of them, like Scott McLeod of the State Department, have had experience in the FBI—an organization that has repeatedly disclaimed any role in *evaluating* security information, which is the function of the security officer. Others have risen through the government administrative service; thus one agency security officer was a chauffeur and uniformed guard before coming up in the world. The security officer of the United States embassy in a crucial country—whose regime saw numerous grave injustices done to foreign employees of the embassy, who lack even the slight protection afforded to American employees under the present program—started his career as an elevator operator in the State Department.

Recently a Congressional investigation focused attention on George McDavitt, a close associate of the notorious Allen Zoll, who had become security officer of the Small Business Administration. (It has been charged by Representative Wright Patman, and not denied, that this agency extended its security investigations from its employees to small businessmen applying for loans.) McDavitt secured his post after being fired for malfeasance as an investigator for the refugee program in Germany—a job for which his principal qualification appears to have been that he had unsuccessfully run for Congress on an anti-immigration platform. Subordinates testified that McDavitt had instructed them to include *only* derogatory information in their reports. McDavitt himself appears to have been a security risk under more than one of the headings of Executive Order 10450, but when the Small Business Administration got around to firing him, it was only for issuing unauthorized statements.

Even a conscientious and intelligent security officer is to a considerable extent dependent on the information supplied him by government investigative agencies. The burden of investigating personnel under the loyalty and security programs has fallen primarily on the FBI. But FBI agents have never been selected mainly with an eye to their political understanding; some of them

are certainly politically sophisticated, but the load of security cases has been such that many agents skilled only in accountancy or ordinary criminal investigation have had to be detailed to security work. Moreover, the FBI has been swamped by its new duties, and has lacked the staff—even including inadequately trained personnel—to meet the demands made on it. In desperation it has subcontracted much of its security work to private detective and credit investigation agencies!

THE two cases from the armed services, one from the Port Security program and one from the International Organizations Employees Loyalty Program, that appear in the Yarmolinsky book are obviously too few to afford much basis for judgment. The Port Security program is administered by the Coast Guard, which, while in peacetime not technically a part of the armed forces, has similar traditions. The one case described is from the West Coast; on the East Coast, it is reliably reported that some Coast Guard hearing boards have helped to prevent injustices to individuals falsely accused of being risks by union political opponents.

Both the International Organizations security program and the Armed Services program raise special problems. In the case of the former, there are serious theoretical and practical objections to the existence of any program at all. Employees of most international organizations have no access to secret information; all the information possessed by such organizations is available as a matter of right to all the member nations. In the higher echelons, it is true, they may deal with important questions of international policy. But an international organization's employees are supposed to carry out *its* policies, rather than those of the member nations from which they happen to come; when a country tries to exercise political supervision over its nationals employed by an international body, this obviously becomes more difficult. There was something more than a little anomalous about summoning an Assistant Secretary General of the

UN before a United States loyalty board, even though the board was of high caliber and its procedure and decision eminently fair. Moreover, the precedent set by the United States can be cited by countries in the Soviet sphere; there are, for instance, a number of anti-Communist Czech and Polish emigrés employed by international agencies to which those nations belong.

Certain special problems are undoubtedly posed by the position of the United States as the host country to the United Nations and a number of other international bodies, and by the fact that an undue proportion of American Communists appear to have obtained positions with some of these agencies in the immediate postwar period. Yet the UN regulations barring political activity by staff members and providing for the dismissal of any engaging in subversive activity (which could not in the nature of things have any *direct* connection with their employment) would seem adequate. Certainly our insistence on investigating the loyalty of American employees of international organizations has repeatedly brought us into conflict with our friends without in any way contributing to our own security. It has also been self-defeating, since the long delay required for a security check before an American can be appointed has made international agencies turn increasingly to other countries in filling posts.

WHILE the Yarmolinsky study barely touches on the security program of the armed forces, this is described in detail by Rowland Watts of the Workers Defense League, an organization with a distinguished record of defending civil liberties and also combating Communism, in his two-volume mimeographed *The Draftee and Internal Security*. The Watts study deals with the policies of the army rather than those of the other services, because until recent months it was the only branch of the armed forces using draftees. This study was also assisted by a grant from the Fund for the Republic. It contains forty-nine case histories, an account of the criteria and procedures used,

and a discussion of the implications of the program. All the individuals concerned were charged with activities *prior to induction*, and on this basis many of them were kept in limited service without possibility of promotion while in the army, and separated from it either with "Undesirable" or "General" discharges. (The "Undesirable" discharge deprives its recipient of all veteran's benefits; the "General" discharge, originally intended for the mentally deficient, is an effective barrier to government employment and many private positions.)

The charges made against the military personnel were of much the same type as in the cases under the government employment security program, with this important difference: since most persons entering the armed forces are still very young, a high percentage of the charges relate to activities during adolescence or involve "guilt by kinship." (While "guilt by kinship" cases that receive enough publicity are generally straightened out at the top level of the various armed services, this does not so far appear to have persuaded the lower levels to abandon this criterion as witness the Landy, Gaston, Branzovich, and other recent cases.)

The draftee brought up on charges receives procedural protections considerably less adequate than even those accorded to civilian government employees. Only a bare summary is furnished him of the information on which the hearing board is acting, and its decision is not communicated to him; he is therefore deprived of any power to appeal personally from that decision to the Army Review Board which examines all cases. Actually, it appears that the Field Board's decision is purely advisory, and the Review Board—before which the draftee never appears—is the real court. After receiving an undesirable or general discharge, a draftee may appeal to the Army Discharge Review Board, which has the power to change his discharge on what is essentially a compassionate basis; it does not hear evidence or review the facts. It should be noted, too, that a soldier who has received an honorable separation at the completion of his

active service may still be brought up on charges and given a "General" or "Undesirable" discharge at any time during the period in which, under the law, he is nominally assigned to the reserve. There is a danger that the army may use this power to exert control on the political activities, and even the personal associations, of former soldiers during their time in the reserve.

Paradoxically, injustices under the military security program appear to have increased sharply in precisely the period in which the climate of opinion in civilian life was improving. Senator McCarthy's battle with the army over the Peress case gave him a real, if Pyrrhic, victory. As a result of that case, the army abandoned its traditional policy of giving a discharge based on the character of service rendered. It now gives an "Undesirable" discharge to those persons whom it considers subversive, and a "General" discharge to those it considers security risks but not subversive, regardless of the character of their military service.

There is no basis either in law or in any Presidential order for the army's present policy in this matter. Executive Order 10450, setting up the Eisenhower loyalty-security program, did not apply to the armed forces. The army adopted its present policy without specific warrant and by analogy. But the analogy was a bad one.

The Federal loyalty-security program finds its legal basis in the fact that government employment is a privilege and not a right. But service in the armed forces as a draftee is neither a right nor a privilege; it is a legally imposed duty. To compel a man to join the army, and then to punish him under military regulations for actions previous to his military service, and over which the army had no jurisdiction, appears to violate not only the Constitutional rights of the individual but the Constitutional boundaries between the civil and military functions—not to mention elementary fairness. In short, as long as the army's present security policy continues, Senator McCarthy will have a fitting memorial.

THE army's procedure is now being challenged in a number of court cases. In a preliminary opinion in one of these, U.S. District Court Judge David N. Edelstein has just held that the army has no power to deny an honorable discharge to a soldier on the basis of his activities before being inducted. Under pressure of publicity and court action, the army has announced a revised policy, under which a security investigation will be conducted *before* induction and a draftee who is accepted will not be penalized for information revealed in that investigation. But what this means is not clear; pre-induction investigation and a discharge based solely on military record were always required in theory, whatever the army's practice. Moreover, the security investigation is to be undertaken before induction only where its need is indicated—presumably by answers to the army's questionnaire as to membership in groups on the Attorney General's list. However, there are qualifications and reservations in the new policy statement which would seem to leave the possibility that soldiers could still be penalized for affiliation with suspect groups not on the list, or for associations—or the activities of relatives—which were discovered after induction. Nevertheless, whatever the army's policy, the courts may soon assure the draftee a protection he now lacks.

It is also not unlikely that some modifications in the present government employee and industrial security programs will be forced by court action. In recent months the courts have for the first time compelled the State Department's passport division, hitherto an almost autonomous fourth branch of the government, to submit to the requirements of due process; they may now be ready to apply the same criterion in other fields. If they do, it may not only eliminate many of the present injustices, but pave the way for a general reconsideration of the security program, leading to the restriction of its operations to sensitive positions alone.

Such a limitation is urgently necessary, in the interests not only of liberty but of security as well. The present program, by

trying to do too much, does nothing well; at the same time its excesses discredit the whole concept of security and make it increasingly probable that the swing of the pendulum will again cause disregard of the problem of Communist infiltration. A program confined to those relatively few positions which are *really* sensitive can be both efficient and just; the present program is and can be neither. Along with a reduction in the scope of the program, new procedural safeguards should be established and civil-service standards appropriate to security officers set up. The industrial security program, so far as it is retained—and to some degree it is probably advisable to keep it—should be removed from the jurisdiction of the armed forces, whose interference in any aspect of civilian life has always been contrary to the spirit of Anglo-American law. Indeed, the security screening of draftees might well be transferred from the armed forces to the Selective Service system. The army should not be used as a prison for persons who have committed no crime; if the government does not want to use a man's services, it should not draft him.

THE GLARING deficiencies of our security program, and the excesses of such legislation as the McCarran Internal Security Act, the McCarran-Walter Immigration Act, and the Dies-Humphrey Act seeking to outlaw the Communist party, can only to a small extent be blamed on demagoguery and ill-will. These acts and programs are, rather, an ill-considered response to a real, suddenly recognized danger. They reflect a failure to recognize even now the nature of that danger; espionage, sabotage, and conspiracy are not best fought by restricting open propaganda or by confounding prevention with punishment. The confusion on this issue is shared by both defenders and critics of the present security system.

Thus John Lord O'Brian, a distinguished Republican lawyer, is quite properly critical of what he calls "a fatuous policy which in effect is aiming to guide and constrain citizens as well as aliens in the exercise of

liberties guaranteed to them by . . . the Bill of Rights." But his little book* is almost entirely devoted to a rhetorical attack on the abuses which have developed. He starts by recognizing that the Communist conspiracy creates dangers and "that the nation must protect itself . . . by some kind of security program," but he nowhere discusses the problem of reconciling such a program with the requirements of civil liberty. Perhaps this is because he is never clear in his own mind as to what the Communist danger consists in; repeatedly, he will talk in one breath of espionage or sabotage, and in the next of propaganda, almost as if these were interchangeable. And he makes the astonishing statement that "it is obvious that none of the programs or regulations would have prevented the treachery of Fuchs, the Rosenbergs, or real Communists of that ilk."

Even a good security program would probably not have caught up with Alger Hiss until too late, but Klaus Fuchs and Julius Rosenberg were sitting ducks for any sort of security screening. The British knew that Fuchs was a Communist when they hired him; he had told them! Julius Rosenberg was also a known Communist; security screening would have kept him out of Fort Monmouth, though it would not have prevented his extra-governmental espionage.

An emphasis on the dangers of Communist propaganda rather than of Communist conspiracy has led many well-meaning people to support unnecessary and perilous restrictions on freedom of speech, press, and association. It leads Mr. O'Brian, who rightly believes that there is little danger that Americans will be significantly influenced by Communist propaganda to any significant extent, to neglect the need for defenses on the conspiratorial side. The twin dangers in our present situation arise from this confusion; we may sacrifice freedom because we fear conspiracy, or we may open the door to conspiracy because we fear tyranny. But we *need* do neither.

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